

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
CHESTNUT RIDGE ASSOCIATES LLC,	§	Case No. 23-90069 (DRJ)
	§	
Debtor.	§	

**DEBTOR'S APPLICATION TO EMPLOY MARCUS & MILLICHAP  
AS REAL ESTATE BROKER FOR THE DEBTOR**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

TO THE HONORABLE DAVID R. JONES, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Chestnut Ridge Associates LLC (the "Debtor"), as debtor and debtor-in-possession, and files this application (the "Application") for entry of an order authorizing the employment and retention of Marcus & Millichap Real Estate Investment Services (the "Broker" or "M&M"), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") as real estate broker to the Debtor. In support of this Application, the Debtor respectfully states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought are 11 U.S.C. §§ 327(a) and 328(a).

### **BACKGROUND**

2. On February 5, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. The Debtor is operating its business and managing its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On March 21, 2023, the United States Trustee (the “UST”) appointed a creditors’ committee in this case.

5. On May 21, 2023, the Debtor filed its *Amended Chapter 11 Plan of Reorganization for Chestnut Ridge Associates LLC* [Docket No. 99] (the “Plan”) and its *Amended Disclosure Statement for the Amended Chapter 11 Plan of Reorganization for Chestnut Ridge Associates LLC* [Docket No. 100] (the “Disclosure Statement”).

6. As of the date of this Application, the combined hearing on the confirmation of the Plan and approval of the Disclosure Statement is set for August 1, 2023, at 10:00 a.m., Prevailing Central Time.

7. On May 31, 2023, the UST filed a *Notice of Disbandment of the Committee of Unsecured Creditors* [Docket No. 112].<sup>1</sup>

8. No trustee or examiner has been appointed in this chapter 11 case.

9. The Debtor is the owner of a Class A grocery anchored shopping center known as The Shoppes at Kingsgate, located at 1113-1387 Kingwood Dr., Humble, Texas (the “Property”). The Property is home to national and local retailers including ALDI, Dollar Tree, Painted Tree, and Tuesday Morning. The improvements were constructed in 1980 and 2017, and renovations were also completed in 2017. The center is situated on a 14.87-acre site. The newest building, constructed in 2017, is occupied by Aldi and Dollar Tree.

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<sup>1</sup> As of the date of this Application, no party has filed a notice of appearance on behalf of the creditors’ committee.

10. The Debtor believes the Property's current value is no less than \$25 million and could be more than \$31 million.

11. A more detailed factual background of the Debtor's business and operations, including the events leading up to the filing of this case is more fully set forth in the *Declaration of Heather Schreer in Support of First Day Motions* [Docket No. 9].

### **REQUEST FOR RELIEF**

12. By this Application, the Debtor seeks Court approval of M&M pursuant to section 327(a) and 328(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014(a), to employ and retain M&M as the Debtor's real estate broker.

13. On April 27, 2023, the Debtor agreed to the terms of the Representation Agreement (the "Agreement") between the Debtor and M&M, a true and correct copy of which is attached as **Exhibit A**.

14. Pursuant to the Agreement, M&M will be retained to market and sell the Property at a listing price of \$30,155,000 for an exclusive period of six months, through and including November 30, 2023. The Agreement provides that M&M will be paid a customary commission of one and one-quarter percent (1.25%) of the sales price for the Property (the "Commission"). By this Application, the Debtor requests approval to retain M&M as the Debtor's real estate broker and to pay the Commission upon the terms of the Agreement.<sup>2</sup>

15. Pursuant to section 328(a), the Debtor may retain the Broker "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). The Debtor submits that the terms and conditions set forth in the Agreement are reasonable and based upon industry

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<sup>2</sup> The Debtor anticipates that if the Property is sold, it will not likely be sold until after the Plan becomes effective. By this Application, the Debtor seeks to employ M&M to start the marketing process to sell the Property, as is contemplated but not required by the Plan, as soon as possible.

standards and practice and that, therefore, the Broker should be retained on these terms and conditions.

16. The Debtor requests that the Court authorize it to retain M&M on the terms set forth in the Agreement and to pay the Broker a commission in the amount, and pursuant to the terms, set forth in the Agreement.

#### **INDEMNIFICATION**

17. The Debtor has agreed to the Agreement typically used by M&M in cases like this, which contains a broad indemnification provision (the "Indemnity") providing that the Debtor agrees to indemnify and hold M&M harmless from any and all liability, damages, losses, causes of action, or other claims (including attorneys' fees and other defense costs) arising from or asserted in connection with any incomplete or inaccurate information provided by Seller, or any material information concerning the Property which Seller has failed to disclose and for any claims against M&M for environmental responsibility with respect to the Property.

#### **DISCLOSURES**

18. This Application is supported by the Declaration of Chris Gainey (the "Declaration") attached hereto as **Exhibit B**.

19. To the best of the Debtor's knowledge, information, and belief, M&M represents no interests adverse to the Debtor or to its estate in the matters for which it is proposed to be retained and is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. The Debtor submits that its employment of M&M would be in the best interests of the Debtor, its estate, and its creditors.

20. The Declaration filed concurrently herewith has been executed on behalf of M&M in accordance with the provisions of sections 327, 328, and 504 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, and the U.S. Trustee Guidelines. The Debtor's knowledge, information, and belief regarding the matters set forth herein are based and made in reliance upon the Declaration.

21. No previous application for the relief requested herein has been made in this case.

**CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the Court enter an Order authorizing the employment and retention of Marcus & Millichap Real Estate Investment Services, as real estate broker for the Debtor on the terms set forth above, and granting the Debtor all other just and proper relief.

Dated: July 13, 2023

Respectfully submitted,

/s/ Jeff P. Prostok

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ATTORNEYS FOR THE DEBTOR  
AND DEBTOR-IN-POSSESSION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon the office of the United States Trustee for the Southern District of Texas, the Lender, the holders of the twenty (20) largest unsecured claims against the Debtor, and parties filing a notice of appearance, via email as indicated below, via ECF electronic Notice, if available, and via United States Mail, first class postage prepaid to the addresses reflected on the attached Service List, on this July 13, 2023.

Kingsgate Partner LLC  
c/o Joshua W. Wolfshohl  
Porter Hedges LLP  
[jwolfshohl@porterhedges.com](mailto:jwolfshohl@porterhedges.com)

/s/ Jeff P. Prostok  
Jeff P. Prostok

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